IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 115

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, AN ILLINOIS CORPORATION,

Appellant,

vs.

MORVIN DUEL, COMMISSIONER OF INSURANCE OF THE STATE OF WISCONSIN,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

BRIEF OF APPELLANT, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, AN ILLINOIS CORPORATION.

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APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN, Opinion in 244 Wis. 429. (R. 135).

This appeal was filed in this Court June 1, 1944 from a final judgment of the Supreme Court of the State of Wisconsin, a court of last resort. (Entered January 18, 1944. Rehearing denied March 14, 1944. R. 134, 140.)

This judgment affirmed a judgment of the Circuit Court of Dane County, Wisconsin which dismissed the complaints in two actions brought by appellant to enjoin the appellee as the Commissioner of Insurance of the State of Wisconsin from interfering with the business, agents and members of the appellant in Wisconsin, and as incidental thereto, to require the said Commissioner of Insurance to issue to the appellant and its agents, licenses as prescribed by law for the license years beginning May 1, 1942 and May 1, 1943. The cases were consolidated and heard as one case and have been so consolidated for the purposes of this appeal.

I—JURISDICTIONAL GROUNDS.

The jurisdiction of this Court to entertain the present appeal is based upon Section 237(a) of the Federal Judicial Code (28 U.S.C.A. Sec 344(a)) and Rule 46 of the Rules of this Court, and involves the validity of Section 201.18 of the Wisconsin Statutes as construed and applied, the Wisconsin Supreme Court, the highest court of that state having held such statute valid and not repugnant to the United States Constitution as a denial of due process, full faith and credit, or impairment of the obligations of contracts, the applicability of the commerce clause not being involved under the existing law of this Court at the time the judgment of the Supreme Court of Wisconsin became final.

Said judgment is challenged in this Court in the following particulars:

(a) It violates the Commerce Clause, Article I, Section 8(3) of the Constitution of the United States;

(b) It denies to the appellant due process of law in violation of Section I of the Fourteenth Amendment to the Constitution of the United States;

(c) It denies full faith and credit to the public acts, records and judicial proceedings of other states of the Union, in violation of Article IV, Section 1 of the Constitution of the United States;

II—STATEMENT OF THE CASE.

The immediate controversy here at issue, arises out of the refusal of appellee as Commissioner of Insurance of the State of Wisconsin to renew the license of the appellant and its agents to transact the various forms of automobile insurance in Wisconsin for the license years beginning May 1, 1942 and May 1, 1943. In order to more readily understand the present controversy, it will be helpful to sketch briefly the manner in which appellant does business and the history of this and related litigation.

The company was originally licensed in Wisconsin on July 13, 1939, to transact all forms of automobile insurance on the life membership fee plan by the then Insurance Commissioner of that state. That license expired May 1, 1940 and renewal has been refused ever since.

The appellant, State Farm Mutual Automobile Insurance Company (hereinafer sometimes referred to as the "company"), is incorporated and does business under the laws of the state of Illinois, with its home office at Bloomington in said state, (R. 10, 16, 30). It began business in 1922 and since organization has continuously written all forms of automobile insurance on the less hazardous types of risks on the mutual plan. (R. 16, 20). It is licensed to do business in thirty-nine states, territories and districts outside of Wisconsin. (R. 16, 100). It has a distinct plan of operation which is used in Wisconsin when it was admitted to that state in 1939 and which it still uses in all states excepting Wisconsin, Arizona, Louisiana and Texas. (R. 14, 19-21, 27, 104-106).

Section 1 of Article VII of the by-laws of the company reads as follows:

> "Membership fees for the different kinds of insurance transacted by the corporation may be fixed in such amounts and upon such conditions as ordered by the Board of Directors and set out in the policy." (R. 104).

Pursuant to that by-law it charges each new member a life membership fee. This fee is required but once in the lifetime of each applicant and entitles the insured to insure against the coverage or hazard for which the membership fee was paid throughout his lifetime, provided he remains a desirable risk. (R. 104-105). This fee is used to reimburse the company for the expense incurred in investigating the moral and physical characteristics of the proposed member and to pay the other expense in acquiring the member. (R. 105).

All policies issued by the company in all states except Wisconsin, Arizona, Louisiana and Texas contain a special provision pursuant to the above by-law which reads as follows.

> "The membership fees set out in this policy, which are in addition to the premiums, are not returnable but entitle the named insured to insure one automobile for the coverages for which said fees were paid so long as this company continues to write such coverages and the insured remains a desirable risk." (R. 104).

As stated in the contract between the company and the policyholder, the membership fees are in addition to the premiums, constitute no part of the premiums and furnish no insurance protection. (R. 104-105). Separate premiums are collected in consideration for the insurance protection furnished by the company. (R. 105). The premiums in this company are for terms of six months each. (R. 105).

The insurance contract specifically provides that the life membership fees are not returnable but the premiums having been prepaid for a six months term, are returnable in whole or in part if the insurance is cancelled either by the policyholder or by the company prior to the expiration of the current policy term. The real distinctive feature of the plan of this company is in the use of the separate life membership fee which gives a life option to the insured to purchase insurance at a saving of from twenty to thirty-five per cent of the usual cost. (R. 20, 105). Most other companies charge a straight premium and do not require a separate and additional life membership fee. (R. 36).

When the company sought renewal of its license for the license years ending May 1, 1940 and May 1, 1941, renewal was refused on the ground that the life membership fee plan was not legal for use in Wisconsin. Litigation ensued which resulted in the decision of *Duel* v. *State Farm Mutual Automobile Ins. Co.*, 240 Wis. 161; 1 N.W. (2d) 887; rehearing denied March 13, 1942; 2 N.W. (2d) 871. This decision reversed the finding made by the Insurance Commissioner of Wisconsin in 1939 and held that the life membership fee plan as used by the company was not permissible in Wisconsin. The Wisconsin Court held that the term "premium" under the Wisconsin statutes, included all items of expense in connection with the insurance business whether preliminary to insurance or otherwise by means of which insurance is finally acquired and performed. That Court so construed Section 201.18 Wis. Stats. as to make the use of the membership fee plan inadmissible in Wisconsin. The company accepted that construction of Section 201.18 Wis. Stats., and thereupon as of April 27, 1942, abandoned the use of the membership fee plan in Wisconsin and has never since used that system in that state. (R. 14, 98).

The company thereupon and throughout the license years involved in this litigation, operated only on the standard premium plan in Wisconsin; that is, the premium collected covered all cost of investigation, acquisition and also all loss and other expense in a single premium. (R. 14, 98). The company having complied with the Court's opinion, then applied for renewal of its license but this was refused for reasons hereafter stated and thereupon further litigation resulted involving the license years beginning May 1, 1942 and May 1, 1943 which culminated in the decision of *State Farm Mutual Automobile Ins. Co.* v. *Duel*, 244 Wis. 429, from which this appeal was taken. The Court in that decision construed Section 201.18 Wis. Stats., as requiring the company as a condition to obtaining a license to set aside a reserve comprising fifty per cent of the membership fees collected by it in all states; this in addition to the usual fifty per cent reserve on the premiums collected by it in all states which latter reserve has been maintained by the company at all times. The purpose of the unearned premium reserve is to make certain that the company will have on hand at all times sufficient funds to make refund to each policyholder of the unearned portion of the premium in the event of cancellation of the policy during the current term or to reinsure the insurance liabilities of the policyholders for the balance of the current term of each in some other company. Section 201.18, Wis. Stats.

The life membership fee plan is used only in those states where the same is lawful and each insurance contract issued there provides that the life membership fee is not returnable. (R. 104). The company resisted the demand for this additional reserve on the membership fees by appellee, as Insurance Commissioner of Wisconsin, on the ground that the membership fees were no part of the premium and that there was no liability of the company in

any event which justified any reserve whatever for unearned premiums or otherwise. (*State Farm Mutual Automobile Ins. Co.* v. *Duel*, 244 Wis. 429). The company also contended that the requirement of this additional reserve had the effect of locking up or freezing a large sum of money in a reserve for which there was no just or sound reason and which had the effect of depriving the company of the use of its own assets and impairing the soundness of the company to the detriment of its own members. Wisconsin policyholders could not benefit from this additional reserve because under the decision in 240 Wis. 161, they could not be parties to the life membership fee plan. It could not benefit policyholders of other states who had paid a life membership fee for the reason that by the terms of their policy contracts, they had expressly waived any right to the return of such membership fees. Such reserve was a detriment not only to Wisconsin policyholders but to policyholders everywhere for the reason that funds in such reserve were to be withdrawn from the free assets of the company and could not thereafter be used for the payment of losses or for dividends to policyholders or to protect against asset fluctuations or to cover any contingency of any other kind. It was a fund dedicated to a purpose which could never be realized and the company took the position that under this state of facts, Section 201.18 as construed by the Wisconsin Supreme Court violated the Constitution of the United States on the grounds stated in (b) and (c) of *I* of this brief and hereafter developed.

As previously stated, the company does business on the life membership fee plan in every state where it operates excepting Wisconsin, Arizona, Louisiana and Texas. (R. 19; 104). The states of Arizona, Louisiana and Texas do not permit use of the plan but hold that since no liability exists, no unearned premium reserves are required on life membership fees wherever collected. Wisconsin alone holds

that such reserves are required and on business done entirely outside of that state. (R. 62-89). The company has been repeatedly examined by various insurance departments of the United States over a long period of years and those examiners have consistently held that unearned premium reserves are not required on the life membership fees. (R. 16, 17, 103).

The importance of this issue arises from the fact that this company does business in most of the states of the Union and is the largest exclusive writer of automobile insurance in the world. (R. 54). As of December 31, 1942, it had total admitted assets of $29,632,845.46. (R. 102). Its total liabilities as of that date including a voluntary and unassigned contingency reserve of $4,000,000.00, were $20,637,863.07. (R. 102). As of that date, its net free surplus available for any contingency was $8,994,982.39. (R. 102). (Bests, Reproduction of Principal Schedules from Casualty and Surety Statements 1943, p. 975, item 58; p. 976, items 48 and 51.) Its total income from policyholders for 1942 amounted to $25,645,992.51 of which $1,630,206.39 represented life membership fees collected from new members in states which recognized these fees as such and not as premiums. (Bests, Reproduction of Principal Schedules from Casualty and Surety Statements 1943, p. 978, item 1, p. 973, item 20.) During the year ending December 31, 1943, the company collected from its policyholders a total of $26,392,840.56 of which $2,582,735.40 represented life membership fees. (Bests Reproduction of Principal Schedules from Casualty and Surety Statements 1943, p. 973, item 19; 1944, p. 1153, item 1, p. 1148, item 19.) The controversy is as to whether or not additional unearned premium reserves may lawfully be required by appellee for the license years in question on such membership fees collected entirely outside of Wisconsin.

The actual mechanics by which the insurance business of the company is carried on is briefly as follows: All

policies, including those containing the life membership contract, are issued by the company at its home office. The agents do not issue policies. All policies are renewed by mail, the company billing the policyholder direct and the policyholder mailing his renewal premium direct to the company. (R. 106). The company does not issue a new policy for each term of insurance but renews the existing policy. (R. 106).

The company began to write business in Wisconsin about January 1, 1940 and notwithstanding litigation, the business steadily increased until the company on or about May 1, 1943 had in excess of 25,000 policies in force in that state with an annual premium income in excess of $400,000. (R. 108). Over $25,000 was invested in building the Wisconsin agency plant and it now has more than 500 producing district and local agents. (R. 108-109).

III—ASSIGNMENTS OF ERRORS.

A. The Supreme Court of the State of Wisconsin erred:

1. In failing to hold that Section 201.18 of the Wisconsin Statutes as construed and applied to appellant, an Illinois corporation, under the existing facts, was invalid as in conflict with the Fourteenth Amendment to the Constitution of the United States as affecting contracts and operations of the appellant beyond the jurisdiction of the State of Wisconsin.

2. In failing to hold that Section 201.18 of the Wisconsin Statutes as construed and applied to appellant, an Illinois corporation, under the existing facts, was invalid and void as in violation of the full faith and credit clause, Article IV, Section 1 of the Constitution of the United States.

B.—The business conducted by appellant in forty states, the District of Columbia and the Dominion of Canada is

commerce and, under the decision of this Court in the case of *The United States* v. *South Eastern Underwriters Association*, 322 U. S. 533, 88 L. Ed. (Adv. Ops) 1082 rendered after the Wisconsin judgment became final, a new issue has been added to this appeal, namely, whether Section 201.18 as construed by the Supreme Court of Wisconsin and applied by appellee violates the Commerce Clause of the United States Constitution, Article I, Section 8(3).

IV—MATERIAL CONSTITUTIONAL AND STATUTORY PROVISIONS.

The constitutional provisions here involved are as follows:

Article I, Section 8(3), United States Constitution, which provides in part:

> "Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes; * * *"

Article XIV, Section 1, United States Constitution, which provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article IV, Section 1, United States Constitution which provides:

> "Full Faith and Credit shall be given in each state to the public Acts, Records and judicial Proceedings of

every other State. And the Congress may by general laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Section 201.18 of the Wisconsin Statutes, which provides:

"Reserves, basis for. (1) The unearned premium or reinsurance reserve for every insurance company when no other statutory provision is made therefor, shall be computed by the commissioner by setting up fifty per cent of the premiums received on all risks that have one year or less to run, and pro rata of all premiums on risks that have more than one year to run. In the case of perpetual risks or policies, the whole amount of premium paid shall be set up as a reserve. Every such company shall show its reserve, computed upon this basis, as a liability in the annual statement required by section 201.50.

"(2) Where no other provision is made therefor by law, the reserves of any insurance company shall be calculated upon such basis, method and plan as shall fully provide for all liabilities, and any basis, method and plan fixed by the order of the commissioner shall be prima facie just, reasonable and proper."

ARGUMENT.

I.

The Statute of Wisconsin as construed and applied by its highest court violates the Commerce Clause, being Article I, Sec. 8(3) United States Constitution.

United States v. *South-Eastern Underwriters Association*, 322 U.S. 533, hereinafter referred to as S.E.U.A., decides that the modern insurance business is commerce and that where such business is conducted across state lines, it is in fact interstate commerce. This decision was rendered after the judgment of the Supreme Court of Wisconsin became final and during the time this appeal was being perfected. The Court will recall that we urged this point in a Supplemental Brief in opposition to appellee's motion to dismiss or affirm and prior to the time that this Court noted probable jurisdiction. We therefore submit that this issue is properly before this Court inasmuch as we presented it at our earliest opportunity (*Brinkerhoff Co.* v. *Hill*, 281 U.S. 673, 678). Certainly the issue was not in the case prior to this Court's determination in S.E.U.A. However, in the event that this Court should not deem the constitutional issues raised in the state court, namely, due process and full faith and credit, determinative of the case, and that in the present record, this question of commerce cannot be passed upon at this time, we submit that the judgment appealed from should be vacated and the cause remanded for further proceedings to enable the state court to pass upon the issues (*Walling* v. *Reuter Co.*, 321 U.S. 671, 676). The statement of facts clearly indicates that appellant is engaged in interstate commerce.

Employing the perspective of interstate commerce, the sole issue is whether appellant, as a condition of doing business in Wisconsin, can be required to conduct its business beyond the borders of Wisconsin in the same manner as Wisconsin requires that business to be conducted within its borders. Thereby is presented the question whether Wisconsin can project its legislation extra-territorially and thereby require national conformance to its policy without doing violence to the Commerce Clause. Readily suggested is the fact that if Wisconsin can do so, any one of the other states may do likewise. The result of such doctrine is immediately apparent. Any one of the other states could, with equal right and greater reason, revoke appellant's license therein because of its compliance with Wisconsin's demands as at variance with its own local policies and prejudicial to its citizenry. Thereby, a corporation engaged in a great national activity such as appellant, finds its interstate activities compressed and circumscribed to areas where the rules are identical. Thus are created various doctrines of various states, not only as to how such business is to be conducted in those states, but how such business is to be conducted nationally as a *sine qua non* to conducting business in those states. Thus, we create the Wisconsin rule, the New York rule, the Illinois rule with their attendant inflexibilities and rigidities. National conformance to a particular state standard or policy as a condition of doing an interstate business in a particular state, creates insulated chambers wherein interstate commerce suffocates in parochial isolation. Thereby is frustrated and defeated that great Clause,—placed there to prevent the States from impeding the free and easy flow of commerce among them. Thereby "the mutual jealousies and aggressions of the states" take form in economic reprisals and extra-territorial legislation which the insurance business, under the heretofore factually false

doctrine of intrastate commerce, presents in high relief. (See Appendix IA, Status As to State Retaliatory Laws, C. C. Fraizer, Director of Insurance of Nebraska, Chairman of the Laws and Legislative Committee of National Association of Insurance Commissioners, The Eastern Underwriter, Dec. 8, 1944, R. 45; Appendix IB, Citations to Various Retaliatory Provisions of the Several States, R. 53.)

The answer to the basic question before this Court lies in a clear understanding of the facts. The key to the problem is in the definition of the word premium. Inherent in the life membership fee plan is the substance that the membership fee is not a premium, nor a part thereof. Once this concept of this membership fee plan is laid aside and the membership fee becomes a part of the premium, the result is a straight premium plan. No one can or does dispute this basic doctrine.

Observe that the cornerstone of Wisconsin's case lies also in the concept of premium. If the membership fee is not a part of the premium, then obviously no reserve is required under the Wisconsin Statute. Remember that we do not here dispute Wisconsin's right to define what shall constitute a premium as to business conducted in Wisconsin. The question, therefore, resolves itself in an attempt by Wisconsin to define what shall constitute a premium on all business done everywhere irrespective of whether the concept of premium is the same in the states where the business is conducted as that of Wisconsin. This premise is irrefutable as the basis for the reserve demanded by Wisconsin lies solely in the collection of a premium. Thus, under Wisconsin doctrine, a membership fee collected in California, recognized as such in that state, there recognized as no part of the premium (*State Farm Mutual Automobile Ins. Co.* v. *Carpenter*, 87 Pac. (2d) 867), there incurring no liability on the part of the Com-

pany for a return of any part thereof, there recognized as belonging absolutely to the Company, as compensation or reimbursement for acquisition expense, becomes a premium requiring the setting aside of 50% thereof as an "unearned premium or reinsurance reserve" (Sec. 201.18, Wis. Stats.) in the face of the incidents arising under the law of the state where the business is transacted. The same is true of the other 35 states which recognize the membership fee as not a part of the premium.

It would seem that the statement contains its own refutation, yet precisely such is the case at bar. Now how does this Wisconsin doctrine operate? In 1942, appellant collected the sum of $1,630,206.39 as membership fees in the states where the membership fee is recognized as such and not as a part of the premium. A reserve on this amount under the Wisconsin decision, would have to be earmarked or set aside as a reserve for a non-existent liability and would be withdrawn absolutely from commerce. What is the appellant's unrestricted and absolute property in those states is, by Wisconsin's determination, converted into a "trust fund for the benefit of policyholders" (Crobaugh, Handbook of Insurance, p. 1143) in those states to secure a liability non-existent there. It could not be taken down for use in developing the commerce of the Company, paying unusual losses anywhere in the states, or other commercial exigencies. There it rests, immobile, a Mortmain, ever alert, however, to satisfy a liability that exists nowhere.

And this notwithstanding that the Wisconsin Court held that this statute (Sec. 201.18 Wis. Stats.) was not a statute designed to secure overall solvency. Specifically the Court said (R. 138):

> "The statute specifically designates the amount of this reserve. It requires the designated amount to be maintained wholly independent of the Company's sol-

> vency in the sense that its assets equal its overall liabilities. No matter by how much the assets of the Company exceed these liabilities, unless the amount designated by the statute is set up as the reserve required by the statute, it cannot have a license to do business in this state and it cannot do business in this state without a license authorizing it to do it. The statute is so written and it has been declared valid, and as it is written it must be executed."

And this notwithstanding the further fact that appellant does not operate on the membership fee plan in Wisconsin, but sets aside 50% of all premiums on business transacted in Wisconsin as the term is defined by the Wisconsin Court as a reserve for its unearned premium liability in Wisconsin. And this in a case where no one claims that appellant does not conform to the Capital and Surplus Statutes of Wisconsin (Wis. Stats. 201.03(9), 201.32(3)) being the ones designed to insure overall solvency, and no question is or can be raised as to appellant's solvency. See Appendix II for text of these statutes. Appellant as of December 31, 1942, had, after providing for all liabilities, a voluntary and unassigned contingent reserve of $4,000,000.00 (R. 102) in addition to a surplus of $8,994,982.39 (R. 102).

Thus is presented the frequently recurring problem of the power of the states over interstate commerce in the absence of Congressional action. Here is presented for the first time that problem as applied to the business of insurance when conducted across state lines. Beginning with *Cooley* v. *Port Wardens*, 12 How. 299, and continuing down to S.E.U.A., 322 U. S. 533, whatever may have been the language employed, this Court has recognized that the problem resolves itself into the question of accommodating "the competing demands of the state and national interests." The touchstone is not in the application of a mechanical formula or catchword. It is found in an application of the law to economic reality and the overmastering

requirement that one State cannot in its dealings with another place itself in a position of economic isolation.

Thus, if Wisconsin is to live with Illinois under the aegis of the Commerce Clause, designed to protect the national commerce and therefore the commerce of both, Wisconsin cannot and should not be permitted to prevent Illinois enterprise from entering Wisconsin under the guise of state interest, if none in fact appears. Conversely, the same is true of Illinois. Inherent in the doctrine of accommodating the state and national interests is the presence of a legitimate state interest. While we are admonished by unimpeachable and venerable authority that the life of the law is not logic but experience, the fact that a thing logically follows does not therefore establish its inapplicability or invalidity. Therefore, if no legitimate state interest is present and the result as construed and applied by the highest court of the state is legislation projected extraterritorially to the detriment of the free and easy flow of commerce among the several states, the answer must be one of proscription.

Therefore, we search for a legitimate state interest. We are abundantly advised. *California* v. *Thompson*, 313 U. S. 109, involving transportation, teaches us that the States may in many particulars, *in matters of local concern*, regulate "without impairing the uniformity of control of the national commerce in matters of national concern and without materially obstructing the free flow of commerce which were the principal objects sought to be secured by the Commerce Clause" (313 U. S. 109, 113). Therein is collected and cited numerous cases illustrative of the doctrine and no useful purpose would be served in marshalling them here. These regulations were valid "*because of their local character*" (*id, emphasis supplied*). We search in vain there for an apposite here. In the main they dealt with regulations of a state relating to the operation of railroads

to protect the safety of its citizens, local quarantine laws to protect local health, the safe and convenient use of its harbors and inspection laws and regulations applicable to articles of interstate commerce designed to protect its citizens from fraud provided such regulations neither discriminated against nor substantially obstructed the commerce. In each case a legitimate state interest was present.

South Carolina State Highway Dept. v. *Barnwell Bros.*, 303 U. S. 177, another transportation case, impresses upon us the particular local concern which a state has over the highways it constructs and the extent to which this Court will protect that legitimate local interest, in the absence of Congressional legislation, even though the regulation materially interferes with interstate commerce. *Union Brokerage Co.* v. *Jensen*, 322 U. S. 202, reminds us that the interstate character of a business does not give it immunity from all state regulation and thereby deprive the state of the power to protect the special interest brought into play by such company's "pursuit of its share in the comprehensive process of foreign commerce." (322 U. S. 202, 212). Certainly neither of these cases is apposite here.

We are further reminded by S.E.U.A. that "the precise boundary between national and state power over commerce has never yet been, and doubtless never can be, delineated by a single abstract definition" (Black, J. 322 U. S. 533, 550), but observe that running through all of these cases is the vein of legitimate local interest,—necessary to be safeguarded. Observe the absence of any effort to give the legislation extra-territorial effect. Observe the absence of an attempt to determine the policy or practice of another state or to determine how interstate commerce is to be conducted there. Observe the absence of any attempt to redefine, alter or burden the character of transactions occurring elsewhere.

Thus we have found many illustrations of legitimate state interest, none of which support Wisconsin here. What do we find in the field of proscription, with particular reference to those cases where the legislation sought to regulate the commerce outside the territorial limits of the legislating state? First we have that great case of *Wabash Ry. Co.* v. *Illinois*, 118 U. S. 557, wherein this Court struck down state legislation frankly aimed to regulate the rate on the state segment of an interstate shipment as violative of the Commerce Clause. Here was a direct attempt by Illinois to project its legislation beyond its borders. Chief Justice Waite, dissenting with two members of his Court, upon the authority of *Peik* v. *C. & N. W. R. Co.*, 94 U. S. 164, argued that the legislation was valid, quoting from the *Peik* case (118 U. S. 557, 592, 593):

> "'As to the effect of the statute as a regulation of interstate commerce, the law is confined to state commerce, or such interstate commerce as directly affects the people of Wisconsin. Until Congress acts in reference to the relations of this company to interstate commerce, it is certainly within the power of Wisconsin to regulate its fares, etc., so far as they are of domestic concern. With the people of Wisconsin this company had domestic relations. Incidentally, these may reach beyond the State. But certainly until Congress undertakes to legislate for those who are without the State, Wisconsin may provide for those within, even though it may indirectly affect those without.'"

Observe that the dissent only claimed the legislation valid upon the premise of "domestic concern."

But the majority through Mr. Justice Miller, said: (118 U. S. 557, 577)

> "Of the justice or propriety of the principle which lies at the foundation of the Illinois Statute it is not the province of this court to speak. As restricted to a transportation which begins and ends within the limits of the State, it may be very just and equitable,

> and it certainly is the province of the State Legislature to determine that question. "But when it is attempted to apply to transportation through an entire series of States a principle of this kind, and each one of the States shall attempt to establish its own rates of transportation, its own methods to prevent discrimination in rates, or to permit it, the deleterious influence upon the freedom of commerce among the States and upon the transit of goods through those States cannot be overestimated."

And so in the case at bar. When constitutional sanction under the Commerce Clause is had for the doctrine that each state may define a premium, a reserve, a liability, or the multitude of other concepts arising from the insurance business, not only on business conducted within its borders, but elsewhere, and compliance therewith requisite to commercial enterprise within it, the fertile field of insurance, now supporting its massive oaks and luxuriant foliage, as S.E.U.A. so graphically illustrates (322 U. S. 533, 540), will shortly become a sandy and arid plain "interspersed here and there with thin and scanty groves of pine."

Coming to *Covington, etc., Bridge Co.* v. *Kentucky*, 154 U. S. 204, we find this Court declaring, as violative of the Commerce Clause, a statute of Kentucky regulating the toll on a bridge across the Ohio River because "it is clear that the state of Kentucky, by the statute in question, attempts to reach out and secure for itself a right to prescribe a rate of toll applicable not only to persons crossing from Kentucky to Ohio, but from Ohio to Kentucky, a right which practically nullifies the corresponding right of Ohio to fix tolls from her own state" (154 U. S. 204, 220).

And now we come to *Baldwin* v. *Seelig*, 294 U. S. 511, which we submit is controlling here. Arraying the economic interests of certain of its citizens in grandma's garments of a regular and adequate supply of pure and

wholesome milk for its citizens, New York sought to sustain a statute which prohibited the sale of imported milk within its borders unless the initial price paid therefor equalled the price paid for a like transaction within the state. Notwithstanding its innocuous raiment, its protestations that its big eyes were to see better, its big ears to hear better, the statutory wolf was recognized by its big teeth—teeth which sought to reach out beyond the borders of New York and devour the farmers of Vermont and adjacent states. Here was a direct attempt to project legislation extra-territorially. What essential difference is there in the attempt of New York to nullify the price of milk in Vermont and that of Wisconsin to nullify the meaning of premium in California and 35 other states?

Through Mr. Justice Cardozo, a unanimous Court said (294 U. S. 511, 527):

> "What is ultimate is the principle that one state in its dealings with another may not place itself in a position of economic isolation. Formulas and catchwords are subordinate to this overmastering requirement. Neither the power to tax nor the police power may be used by the state of destination with the aim and effect of establishing an economic barrier against competition with the products of another state or the labor of its residents. Restrictions so contrived are an unreasonable clog upon the nobility of commerce. They set up what is equivalent to a rampart of customs duties designed to neutralize advantages belonging to the place of origin."

Thus we find no instance where this Court has permitted extra-terrtorial effect to state legislation affecting interstate commerce. Beyond a state's borders lies forbidden territory, the bailiwick of another of equal dignity and power, recently emphasized by *McLeod v. Dilworth Co.*, 322 U. S. 327. There Arkansas was denied the right "to project its powers beyond its boundaries and to tax an inter-

state transaction" (p. 911), for, to rule otherwise, would defeat "the very purpose of the Commerce Clause" designed "to create an area of free trade among the several states" (p. 912). Equally enervating to free trade is Wisconsin's egocentricity.

The argument begets greater force when you consider the complete absence of a legitimate local interest. What Wisconsin interest is served by the statute as construed and applied by its highest Court? We are advised of none in its opinion. The question of legitimate state interest was pertinent to our claim of a denial of due process and relevant authorities such as *Fidelity & Deposit Co.* v. *Tafoya*, 270 U. S. 426, 435, per Holmes, J., were cited in our brief, but our argument was answered with the following (R. 139):

> "The company seems to think that its constitutional rights are in some way interfered with by the commissioner's refusal to issue it a license. We are unable to perceive that any such question is involved in view of the fact that the company is only required to do what every other corporation, whether domestic or foreign, and every other person or association that wants to do a like insurance business in Wisconsin is required to do."

The Court expressly negatived any solvency interest (R. pp. 138, 139). The question of legitimate state interest was not factually investigated or considered by that Court. One can't even say that it assumed *sub-silentio* that Wisconsin gained something by the construction it placed upon that statute.

Consideration of the matter clearly discloses no legitimate Wisconsin interest. In fact the contrary appears. Certainly Wisconsin can have no legitimate interest in requiring the Company to set up an unearned premium reserve on membership fees collected outside of Wisconsin when no such liability exists. No person who paid any

of these membership fees outside of Wisconsin can be a beneficiary because under his contract no part of the membership fee is returnable to him. No Wisconsin policyholder could have any part of it because he paid no part of it and any liability to return premium to him is already set up as a reserve conformably to the Wisconsin Statute because all payments he made are considered premium and included in unearned premium reserve carried by the Company. Thereby is created a situation whereby the Company is required to set aside a large sum as a reserve to meet a non-existent liability. As we have heretofore indicated, it could not be taken down for use in developing the commerce of the Company, to meet unusual losses occurring anywhere, or for other commercial exigencies. Instead of promoting solvency, its only tendency would be to precipitate insolvency, because, if liquid as it should be, instead of frozen as it would be, it might be applied to avert insolveny in exigent economic circumstances. That Wisconsin policyholders could have no interest in it is clearly evident from its nature.

> "The unearned premium reserve is sometimes called the reinsurance reserve, or the amount necessary for reinsuring the risks, but this is not the main reason for holding the reserve. The main reason for the reserve is to maintain in trust for the exclusive right of the policyholders, a sum equal to the unearned part of the premiums already collected." (*Crobaugh, Handbook of Insurance*, p. 1143 (1931)).

It seems to us quite evident that no legitimate purpose is served in requiring a reserve to secure a contingent liability in the absence of a contingent liability.

The doctrine of the Supreme Court of Wisconsin has, however, sinister implications. This record shows that appellant, doing business on the membership fee plan since 1922, the date of its incorporation, not only has risen to its pre-eminent position in the industry, but has sold its insurance at rates from 20% to 35% less than the so-called

conference rates. The reasons therefor are pleaded in its complaint and admitted in the record (R. 20, 21). It is, of course, impossible for a Wisconsin company to operate upon this membership fee plan not only in Wisconsin but elsewhere, because Wisconsin, not recognizing the membership fee plan (*Duel* v. *State Farm Mut. Auto. Ins. Co.*, 240 Wis. 161), will not charter a company doing business on that basis. Are we impertinent when we suggest that the real reason behind Wisconsin's refusal to relicense appellant lies in its desire to protect its own companies not only from competition in Wisconsin but elsewhere? We know of no other reason for the determination and we are advised of none by Wisconsin's court, except its statement that its opinion was sound because it operated alike upon all insurance companies doing business in Wisconsin. In effect Wisconsin is insulating its insurance citizens against worthy competition not only in Wisconsin but elsewhere, to the detriment of the vast majority of its other citizens who desire to purchase responsible low cost insurance.

We must remember also that we are not dealing with a plain and unambiguous statute of Wisconsin clearly evincing its policy. It took a court decision to determine that premium included membership fee collected in Wisconsin (*Duel* v. *State Farm*, 240 Wis. 161) and it took the instant decision to determine that premium meant membership fees collected everywhere in face of the laws of the state where collected so that Wisconsin's reserve for unearned premium statute could be applied to require a reserve for a nonexistent liability and thereby preclude relicense of appellant. While the *Barnwell* case, 303 U. S. 177, sustained state legislation relative to the use of the highways of South Carolina, the opinion contained a very authoritative and informatory note relative to state control over interstate commerce in the absence of Congressional legislation

(303 U. S. 177, 185, Footnote 2). Stated there is the following rule:

> "State regulations affecting interstate commerce, whose purpose or effect is to gain for those within the state an advantage at the expense of those without, or to burden those out of the state without any corresponding advantage to those within, have been thought to impinge upon the constitutional prohibition even though Congress has not acted (citing numerous cases).
>
> "Underlying the stated rule has been the thought, often expressed in judicial opinion, that when the regulation is of such a character that its burden falls principally upon those without the state, legislative action is not likely to be subjected to those political restraints which are normally exerted on legislation where it affects adversely some interest within the state. (citing numerous cases)"

The relevancy of the note is obvious. It seems clear to us that the only purpose of the construction placed upon the statute by the Wisconsin Court is to gain for those companies within the state not doing business on the membership fee plan, an advantage at the expense and burden of those without the state without any showing of any advantage to any citizen within the state except those citizens who may be competitors of appellant.

Boiled down to its essentials, the case is another *Baldwin* v. *Seelig*, insurance instead of milk, presented here denuded of the raiment of local interest but premised solely upon its equal operation on all in Wisconsin. The equal operation on all in New York did not save Mr. Baldwin and it should not save Mr. Duel. In characteristic style, Mr. Justice Cardozo, delivering this Court's unanimous opinion, said (294 U. S. 511, 521):

> "New York has no power to project its legislation into Vermont by regulating the price to be paid in that

state for milk acquired there. So much is not disputed. New York is equally without power to prohibit the introduction within her territory of milk of wholesome quality acquired in Vermont, whether at high prices or at low ones. This again is not disputed. Accepting those postulates, New York asserts her power to outlaw milk so introduced by prohibiting its sale thereafter if the price that has been paid for it to the farmers of Vermont is less than would be owing in like circumstances to farmers in New York. The importer in that view may keep his milk or drink it, but sell it he may not.

"Such a power, if exerted, will set a barrier to traffic, between one state and another as effective as if customs duties, equal to the price differential, had been laid upon the thing transported. Imposts or duties upon commerce with other countries are placed, by an express prohibition of the Constitution, beyond the power of a state 'except what may be absolutely necessary for executing its inspection laws.' Constitution, Art. I, Sec. 10, clause 2; *Woodruff* v. *Parham*, 8 Wall. 123, 19 L. Ed. 382. Imposts and duties upon interstate commerce are placed beyond the power of a state, without the mention of an exception, by the provision committing commerce of that order to the power of the Congress. Constitution, Art. I, Sec. 8, clause 3. 'It is the established doctrine of this court that a state may not, in any form or under any guise, directly burden the prosecution of interstate business.' *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 112, 54 L. ed. 678, 687, 30 S. Ct. 481, 27 L. R. A. (N. S.) 493, 18 Ann. Cas. 1103, and see *Brennan* v. *Titusville*, 153 U. S. 289, 38 L. ed. 719, 14 S. Ct. 829, 4 Inters. Com. Rep. 658; *Brown* v. *Houston*, 114 U. S. 622, 29 L. ed. 257, 5 S. Ct. 1091; *Webber* v. *Virginia*, 103 U. S. 344, 351, 26 L. ed. 565, 567; *Kansas City S. R. Co.* v. *Kaw Valley Drainage Dist.*, 233 U. S. 75, 79, 58 L. ed. 857, 859, 34 S. Ct. 564. Nice distinctions have been made at times between direct and indirect burdens. They are irrelevant when the avowed purpose of the obstruction, as well as its necessary tendency, is to suppress or mitigate the consequences of competition

between the states. Such an obstruction is direct by the very terms of the hypothesis. We are reminded in the opinion below that a chief occasion of the commerce clauses was 'the mutual jealousies and aggressions of the States, taking form in customs barriers and other economic retaliation.' Farrand, Records of the Federal Convention, vol. II, p. 308; vol. III, pp. 478, 547, 548; the Federalist, No. XLII; Curtis, History of the Constitution, vol. 1, p. 502; Story on the Constitution, Sec. 259. If New York in order to promote the economic welfare of her farmers, may guard them against competition with the cheaper prices of Vermont, the door has been opened to rivalries and reprisals that were meant to be averted by subjecting commerce between the states to the power of the nation.

"The argument is pressed upon us, however, that the end to be served by the Milk Control Act is something more than the economic welfare of the farmers or of any other class or classes. The end to be served is the maintenance of a regular and adequate supply of pure and wholesome milk, the supply being put in jeopardy when the farmers of the state are unable to earn a living income. *Nebbia* v. *New York*, 291 U. S. 502, 78 L. Ed. 940, 54 S. Ct. 505, 89 A. L. R. 1469, *supra*. Price security, we are told, is only a special form of sanitary security; the economic motive is secondary and subordinate; the state intervenes to make its inhabitants healthy, and not to make them rich. On that assumption we are asked to say that intervention will be upheld as a valid exercise by the state of its internal police power, though there is an incidental obstruction to commerce between one state and another. This would be to eat up the rule under the guise of an exception. Economic welfare is always related to health, for there can be no health if men are starving. Let such an exception be admitted, and all that a state will have to do in times of stress and strain is to say that its farmers and merchants and workmen must be protected against competition from without, lest they go upon the poor relief lists or perish altogether. To give entrance to that excuse would be to invite a speedy

> end of our national solidarity. The Constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division."

(See also the concurring opinion of Mr. Justice Jackson in *Duckworth* v. *Arkansas*, 314 U. S. 349, 401-402).

Contrast the absence of legitimate local interest with the presence of national interest. Insurance, we are informed "holds a commanding position in the trade and commerce of our nation" having "become one of the largest and most important branches of commerce" with "total assets approximately the "equivalent of the value of all farm lands and buildings in the United States". Its annual premium receipts exceed "more than the average annual revenue receipts of the United States Government during the last decade". In it are 524,000 experienced workers, "almost as many as seek their livings in coal mining or automobile manufacturing". No modern enterprise directly affects more persons in all walks of life. It "touches the home, the family and the occupation or business of almost every person in the United States" (per Black, J. in *U. S.* v. *S. E. U. A.*, 322 U. S. 533, 88 L. Ed. 1082, 1086, 1087).

Coming specifically to the business of automobile insurance consideration is immediately focused upon its fluidity. A car insured in New York is invited to use nationally supported highways. It may be in New York today, in Ohio tomorrow, and in Illinois the day following. This swiftly moving traffic may be and often is involved in an accident in any state. The need for prompt investigation and settlement or contest of claims arising therefrom is of extreme interest to the persons involved as well as the body public in general. The national interest demands the opportunity to enjoy the greatest possible convenience and

service under the insurance contract anywhere. Large companies like appellant have service agencies scattered through various cities in the states wherein the business is conducted, affording prompt relief to persons whose body or property may be injured or damaged in the never ending payment for the tempo and complexities of modern life.

Thus clearly demonstrated is the admonition that "the actualities of life do not lend themselves to scrupulous insulation of disparate interests" (Frankfurter, The Commerce Clause, p. 21). If the Commerce Clause is to continue to be a great "unifying force", if we "must sink or swim together", Wisconsin's provincialism must yield to the urbanity of reality, or "48 distinct territorial compartments" will continue to "function in isolation from each other" (per Black, J. in *U. S.* v. *S.E.U.A.*, 322 U. S. 533, 541) with their ever mounting retaliations and reprisals. (Appendix I (A)(B), R. 45, 53).

II.

The Statute of Wisconsin as construed and applied by its highest court denies appellant due process in violation of the 14th Amendment.

Relevant recollection reminds us that appellant initially entered Wisconsin pursuant to a license which gave approval to its life membership fee plan. Thereupon, it began business there. At the time of the acts complained of herein, it had established in Wisconsin an administrative office. It had in Wisconsin approximately 500 agents, 25,000 risks in force, with an annual premium income therefrom in excess of $400,000.00 and it had, in creating and developing this business, expended moneys in excess of $25,000.00 (R. 108, 109). Thereby it became a person

within the aegis of the due process clause (*Fidelity & Deposit Co.* v. *Tafoya*, 270 U. S. 426, 434) and entitled to its protection "against a subsequent application to it of state law" (*Connecticut General Life Ins. Co.* v. *Johnson*, 303 U. S. 77, 80).

At the outset, from the standpoint of due process, we agree that Wisconsin may lawfully prescribe the method or manner in which business is to be done therein and both domestic and foreign corporations must comply therewith. Wisconsin may also lawfully prescribe the conditions for admission of a foreign company but due process "denies to a state any power to restrict or control the obligation of contracts executed and to be performed without the state as an attempt to exercise power over a subject matter not within its constitutional jurisdiction." (*Alaska Packers Assn.* v. *I.A.C.*, 294 U. S. 532, 540). Likewise we regard it as settled authority that a state may not use its power to exclude foreign corporations from local business as a means of controlling the operations or contracts of such foreign corporations in other states (*Fidelity & Deposit Co.* v. *Tafoya*, 270 U. S. 426), excepting only in those situations where the local legislation is essential for accomplishing genuinely legitimate local purposes for the protection of its own citizens. (*Osborn* v. *Ozlin*, 310 U. S. 53; *Hoopeston Canning Co.* v. *Cullen*, 318 U. S. 313.)

With these principles in mind, we find that thirty-nine states respect the terms of appellant's policy contract that membership fees are not a part of the premium, that they are not returnable if the contract of insurance is cancelled before maturity and that unearned premium reserves in such states are only required on sums collected and denominated in those states as premiums. While the membership fee plan is not used in three of these states, nevertheless they accord the same effect to the contract in other states as do the states where the membership fee plan is accepted.

Aside from Wisconsin, the uniform interpretation is that the membership fees collected by appellant in its almost nationwide business, are not premiums and are not to be used in computing unearned premium reserves or any other liability. (R. 21, 22; Admissions of Answers, R. 39-40; *State Farm Mutual Automobile Ins. Co.* v. *Carpenter*, (Cal. App.) 87 Pac. (2d) 867; (hearing denied by Cal. Sup. Ct. on April 21, 1939); *Kreifels* v. *State Farm Mutual Automobile Ins. Co.*, 62 N. D. 667; 244 N. W. 880; Opinions of various State Ins. Depts., and Attorneys General, R. 50, 53, 72, *et seq.*)

Wisconsin thus seeks to require appellant to compute and maintain an unearned premium reserve which is neither contractually nor by legal interpretation the true measure of its unearned premium or reinsurance reserve liability. It seeks to force appellant to treat as subject to possible return to its policyholders in the thirty-six states where the membership fee plan is used, a sum which under the contracts issued there is not returnable and for which no liability, either present or potential, does or can exist. On the other hand, the parties to those insurance contracts executed in those states recognizing the membership fee as no part of the premium, acquired rights beyond the borders of Wisconsin. Those contracts are neither made nor are they to be performed in that state. The company's liability for unearned premiums or reinsurance reserve on those contracts became fixed by the laws of those states. The amount paid as a membership fee is no part of that liability and bears no relationship to it whatever under those laws. What Wisconsin seeks to do here is to impress upon those contracts a burden not contracted for, namely, the creation of a reserve for a liability that does not exist in those states and *therefore cannot exist in Wisconsin*, and that wholly without any relation to anything done or to be done within its borders, quite similar to

that which was condemned as violative of due process in *Home Ins. Co.* v. *Dick*, 281 U. S. 397, 407, which we discuss hereafter.

We have here no insolvent intruder. The solvency of appellant is well established and has been heretofore discussed. (*Ante*, pp. 8, 9, 16). Likewise, we have here no solvency statute although appellee, in his motion to dismiss or affirm, suggested that the Wisconsin Court held that the statute in question (201.18 Wis. Stats.) prescribed "a uniform minimum yardstick of over-all solvency that is used for comparative purposes in testing financial soundness and responsibility" (p. 9) and that the *Hoopeston* case, 318 U. S. 313, definitely established that "such reserve requirement is well within state power". (p. 11) Ignored is the fact that the Wisconsin Court decided the case upon no such premise. To that court "over-all solvency" was immaterial:

> "The Statute specifically designates the amount of this (unearned premium) reserve. It requires the designated amount to be maintained wholly independent of the company's solvency in the sense that its assets equal its over-all liabilities. No matter by how much the assets of the company exceed these liabilities, unless the amount designated by the statute is set up as the reserve required by the statute, it cannot have a license to do business in this state and it cannot do business in this state without a license authorizing it to do it." (R. 138)

In its opinion, this was so because "the statute is so written and it has been declared valid, and as it is written it must be executed." (R. 138) Let us remember that it took a court decision to determine that premium included membership fee. (*Duel* v. *State Farm Mutual Automobile Ins. Co.*, 240 Wis. 161). That court was not concerned "with the probability of the company's meeting the obligation to refund unearned premiums out of its surplus or

its contingent reserve or its other assets". It was concerned only "with the carrying out of the legislative intent evidenced by the statute." (R. 139) We might pause to inquire relative to the imminence of "the probabilitiy of the company's meeting the obligation to refund unearned premium" in the absence of an obligation created, but we are content to rely upon the indisputable fact that the section in question is not a general solvency statute, is not "a uniform minimum yardstick of over-all solvency", the Attorney General of Wisconsin to the contrary notwithstanding. It is a statute designed to secure an adequate reserve to cover the unearned premium liability of the company to its policyholders and nothing else (Crobaugh, Handbook of Insurance, 1931, p. 1143), and it necessarily presupposes the existence of a premium upon which a contingent liability can be superimposed.

In *Home Insurance Co.* v. *Dick*, 281 U. S. 397, 407, a similar principle was involved. One Dick, a citizen of Texas, brought action in a Texas state court against a Mexican corporation to recover on a policy of fire insurance for the total loss of a tug. Jurisdiction was asserted *in rem* through garnishment against the The Home Insurance Company and the Franklin Fire Insurance Company which reinsured by contracts with the Mexican corporation, part of the risks it had assumed. The garnishees are New York corporations licensed to do business in Texas. The defendant, Mexican corporation was never admitted to do busines in Texas. Suit was not commenced until more than one year after the date of the loss. The policy limited recovery to suits in accordance with Mexican law filed within one year. A Texas statute declared invalid any contractual limitation of right to sue to a shorter period than two years. This court held the Texas statute repugnant to the due process clause of the Federal Constitution, saying in part:

"The statute is not simply one of limitation. It does not merely fix the time in which the aid of the Texas courts may be invoked. Nor does it govern only the remedies available in the Texas courts. *It deals with the powers and capacities of persons and corporation.* It expressly prohibits the making of certain contracts. *As construed, it also directs the disregard in Texas of contractual right and obligations wherever created and assumed; and it commands the enforcement of obligations in excess of those contracted for.*" (Emphasis supplied)

In *Connecticut General Life Ins. Co.* v. *Johnson*, 303 U. S. 77, this court held invalid as violative of the due process clause, a tax laid by the state of California on the receipt by appellant, a Connecticut insurance company, of insurance premiums received for reinsuring other insurance corporations against loss on policies of life insurance effected by such corporations in California and issued to residents there. Appellant was licensed to do business in California. The reinsurance contracts were entered into in Connecticut where the premiums were paid and where the losses, if any, were payable. This court, through Mr. Chief Justice Stone, said (p. 81):

"Appellant, by its reinsurance contracts, undertook only to indemnify the insured companies against loss upon their policies written in California. The reinsurance involved no transactions or relationship between appellant and those originally insured, and called for no act in California. *Connecticut General L. Ins. Co.* v. *Johnson, supra* (3 Cal. (2d) 87, 43 P. (2) 278); compare *Morris & Co.* v. *Skandanivia Ins. Co.*, 279 U. S. 405, 408, 73 L. Ed. 762, 765, 49 S. Ct. 360. Apart from the facts that appellant was privileged to do business in California, and that the risks reinsured were originally insured against in that state by companies also authorized to do business there, California had no relationship to appellant or to the reinsurance contracts. No act in the course of their formation, performance or discharge, took place there. The per-

formance of those acts was not dependent upon any privilege or authority granted by it, and California laws afforded to them no protection.

"The grant by the state of the privilege of doing business there and its consequent authority to tax the privilege does not withdraw from the protection of the due process clause the privilege which California does not grant, of doing business elsewhere."

Discussing this case in *Wisconsin* v. *J. C. Penney Co.*, 311 U. S. 435, and pointing to its inapplicability there, Mr. Justice Frankfurter, delivering this Court's opinion, said (pp. 445, 446):

"Nor does *Connecticut General L. Ins. Co.* v. *Johnson*, *supra*, (303 U. S. 77, 82 L. ed 673, 58 S. Ct. 436) present a barrier against what Wisconsin has done. Its presuppositions recognize the scope of the state taxing power we have outlined. 303 U. S. 77, 80, 82, 83 L. ed 673, 677, 678, 58 S. Ct. 436. In the precise circumstances presented by the record it was found that the tax neither in its measure nor in its incidence was related to California transactions. . . ."

That is precisely the point here. The statute of Wisconsin, as construed and applied here, is totally unrelated to Wisconsin transactions, but to transactions occurring elsewhere,—transactions, the legal consequences of which are fixed, not by the laws of Wisconsin, but by the laws of the state of occurrence. Wisconsin seeks to project its laws beyond its boundaries as to these transactions and alchemize them.

In a similar vein, in considering a Mississippi statute which invalidated and nullified certain provisions of an insurance contract entered into in another state, this Court, in *Hartford A. & I. Co.* v. *Delta & Pine Land Co.*, 292 U. S. 143, said at page 149:

"The Mississippi statutes, so construed, deprive the appellant of due process of law. A state may limit or prohibit the making of certain contracts within

its own territory (*Hooper* v. *California*, 155 U. S. 648, 39 L. ed. 297, 15 S. Ct. 207, 5 Inters. Com. Rep. 610; *Orient Ins. Co.* v. *Daggs*, 175 U. S. 557, 565, 566, 43 L. ed. 552, 555, 556, 19 S. Ct. 281; *New York L. Ins. Co.* v. *Cravens*, 178 U. S. 389, 398, 399, 44 L. ed. 1116, 1123, 1124, 20 S. Ct. 962); but it cannot extend the effect of its laws beyond its borders so as to destroy or impair the right of citizens of other states to make a contract not operative within its jurisdiction, and lawful where made. *New York L. Ins. Co.* v. *Head*, 234 U. S. 149, 58 L. ed. 1259, 34 S. Ct. 879; *Aetna L. Ins. Co.* v. *Dunken*, 266 U. S. 389, 399, 69 L. ed. 342, 349, 45 S. Ct. 129."

We are aware that due process does not insulate appellant against state action which "may have repercussions beyond state lines. . . ." (*Osborn* v. *Olzin*, 310 U. S. 53, 62.) We are likewise aware of the equally potent doctrine that due process shields appellant from such repercussions in the absence of "a legitimate interest of the state". (Holmes, J., in *Fidelity & Deposit Co.* v. *Tafoya*, 270 U. S. 426, 435.) Thus the issue is one of whether the doctrine of Wisconsin so affects Wisconsin's interests as to give it "the power it claims". (*Hoopeston Canning Co.* v. *Cullen*, 318 U. S. 313, 316.) We have, in our argument under the Commerce Clause, discussed the absence of a legitimate Wisconsin interest (*ante*, pp. 14-29) and see no necessity for reiteration.

Tafoya, 270 U. S. 426, we submit, is decisive. There it was sought to suspend Fidelity & Deposit Company from doing business in New Mexico, requiring it to file a bill in equity to prevent such suspension, the identical remedy pursued by appellant here. Suspension was premised upon the company's violation of a New Mexico statute which prohibited payment of any fee of any nature "to any person, firm or corporation not a resident of the state of New Mexico, for the obtaining, placing or writing of any policy or policies of insurance covering risks in New

Mexico". The penalty for violation was suspension for not less than one year, to be removed only upon a written pledge that the statute would be observed. In holding the statute violative of due process, Mr. Justice Holmes, delivering this court's opinion, after reviewing the authorities sustaining the company's right to invoke the due process clause, said on page 435:

> "In short, it is said the purpose was to secure responsible men to represent the company on the spot. But whether such an interpretation would save the act or not it is impossible to limit it in that way. It forbids the payment of any emolument of any nature to any person for the obtaining, placing or writing of any policy covering risks in New Mexico. *The words go beyond any legitimate interests of the state. . . .*" (Emphasis supplied).

We must remember the absence of any Wisconsin interest appearing in the opinion of its Court. Compliance with the statute was mandatory because it "is so written and it has been declared valid, and as it is written it must be executed." (R. 138) It was constitutional because of its like operation upon all. This doctrine, not having saved Mr. Tafoya, should not save Mr. Duel. With all deference, it is apparent that Wisconsin begged the question here. Notwithstanding relevant authorities of this Court cited in our briefs, Wisconsin's Court did not factually investigate or consider whether the statute as construed went "beyond any legitimate interest of the state" or whether it affected Wisconsin's interests as to give Wisconsin "the power it claims."

Nothing in *Hoopeston Canning Co.* v. *Cullen*, 318 U. S. 313 or *Osborn* v. *Ozlin*, 310 U. S. 53, militates against appellant. In each of those cases a legitimate state interest was present: solvency and convenience in the former (318 U. S. 313, 318); service and lessening of "risks of casualty and loss" in the latter (310 U. S. 53, 64). In the lat-

ter, this Court, through Mr. Justice Frankfurter, was careful to point out that what Virginia had done was "very different from the imposition of conditions upon appellants' privilege of engaging in local business which would bring within the orbit of state powers matters unrelated to any local interests." (p. 65) *That is the very point here.*

At the risk of repetition, we ask, what conceivable legitimate local interest does Wisconsin have in requiring appellant to set aside a reserve on business transacted outside its borders to secure a contingent liability non-existent there? With much greater force does the claimed right demand denial when no question is raised as to appellant's solvency and it complies with all of Wisconsin's solvency statutes! If Wisconsin has no "legitimate interest," if its interests are not so affected as to give it "the power it claims," and we submit it has none, then we have a clear effort by Wisconsin to regulate insurance contracts entered into beyond its borders by giving extraterritorial effect to its statute, an unconstitutional assumption of power, proscribed by due process.

III.

Section 201.18, Wisconsin Statutes, as construed and applied by its highest Court violates the full Faith and Credit Clause, Article IV, Section 1 of the Constitution of the United States.

Legislative recognition of the importance of insurance companies occurred early in the history of our country. First this recognition was in the form of charters for individual companies. These early charters contained provisions for the protection of the insuring public. With the growth of the country and the expansion of the means of transportation, the insurance business grew and the problems of supervision became more complex. As stated

by the Honorable George W. Miller, Superintendent of Insurance of the State of New York, on February 3, 1871:

> "The past and prospective increase in the number of state departments, each established under different laws and adopting different forms, rules, and regulations, has naturally tended rapidly to increase the labors and consequent expense of insurance companies, and, of course, to absorb by so much the security or funds of the insured. . . . The most feasible and practicable mode of securing that simplification and unification both of form and of law, which public interests seem to demand, will be found in concertive action on the part of those several state officers charged by their respective states with the supervision of insurance." (Huebner Foundation Lectures, University of Pennsylvania Press, 1943, pp. 12, 13)

Out of the conventions described in the foregoing lectures have come many cooperative practices, including uniform forms and procedures for the examination of insurance companies, as well as convention examinations, wherein a committee of several states, through representation, make examinations of companies and the results of these examinations are given full faith and credit in all other states in which the company is licensed or is making application for license.

Each step toward cooperation was taken with full recognition of the sovereignty of each particular state but understanding full well that the importance of the business required a degree of uniformity in regulation and supervision not inherent in the independent action of each state or without faith and credit in the acts of the several respective states as they took care of this growing public business within their own respective borders. "This business is not separated into 48 distinct territorial compartments which function in isolation from each other." (Per Black, J., in S.E.U.A., 322 U.S. 533, 541)

Into that extensive field of individual state regulation came appellant in 1922. In 1939 it was licensed to transact business in 38 states. Legal recognition thus accorded appellant's method of doing business finds buttressing support in six cooperative state examinations (R. 56). In 1942 came Wisconsin and for the first time announced a new concept of premium wholly inconsistent with that of all the other states and at direct variance with its position at the time it licensed appellant in 1939,—a position which requires appellant to set aside a large sum of money as a reserve for a liability in 36 states, non-existent there.

The statutory acts for the regulation of the insurance business in several states are "Public Acts" and therefore are entitled to full faith and credit in the constitutional sense (*John Hancock Mut. Life Ins. Co.* v. *Yates*, 299 U.S. 178, 183). Likewise, liabilities created by statute or court decision, particularly those created by the chartering state, are entitled to full faith and credit (*Royal Arcanum* v. *Green*, 237 U.S. 531, 542-543; *Modern Woodmen* v. *Mixer*, 267 U.S. 544, 551). The granting of a license to transact an insurance business in a state is a certification of compliance by the licensee with all provisions of the licensing state concerning the conduct of that business (*State of Ohio ex rel. Richard* v. *Ackerman*, 51 Ohio 163, 37 N.E. 828, 24 L.R.A. 298, 309).

State Farm Mutual Automobile Ins. Co. v. *Carpenter* (Calif. App.) 87 Pac. (2d) 967, hearing denied by Supreme Court of Cal. (R. 79), *Kreifels* v. *State Farm Mutual Automobile Ins. Co.*, 62 N. D. 667, 244 N. W. 880 (R. 62) and *State Farm Mutual Automobile Ins. Co.* v. *Earle, as Insurance Commissioner of the State of Oregon*, a decision of the Circuit Court in said State (R. 68), hold that the membership fee charged by appellant is not a part of the premium relative to business transacted in those jurisdictions. Such also are the uniform rulings and inter-

pretations placed upon the statutes of all other states in which appellant conducts its business by the proper state officials, save only Wisconsin, and this record contains abundant evidence thereof (R. 51, 57, 72-89). Appellant is an Illinois corporation and the record shows that the Director of Insurance of that State, under oath, states that the law of Illinois declares that membership fees collected in Illinois "are not a part of the premium" (R. 52). Appellant's position finds concurrence in the periodical examinations made jointly by and under the direction of the National Convention of Insurance Commissioners of two or more of the insurance departments of states in which it is licensed to do business (R. 16, 17, 51). Adamant, Wisconsin stands alone.

"Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other state." Simple and commanding language, integrally a part of the great plan "to weld a loose confederacy into a single, indivisible Nation" wherein, for the common good of all, deference and regard for the judgments and policies of one state must be observed in others. In its most recent pronouncement, this Court said (Stone, C. J., in *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, 439):

> "The full faith and credit clause like the commerce clause thus became a nationally unifying force. It altered the status of the several states as independent foreign sovereignties, each free to ignore rights and obligations created under the laws or established by the judicial proceedings of the others, by making each an integral part of a single nation, in which rights judicially established in any part are given nation-wide application."

This doctrine becomes an illusory one if Wisconsin need not accord any faith or credit to the judicial determinations of California, North Dakota and Oregon, not to mention the interpretations and rulings of the other states as

to the meaning of their statutes? Wisconsin accords no faith and credit to anyone. Only esoteric Wisconsin knows what premium means, and, knowing its meaning, her egocentricity demands that everyone everywhere accord to it the same meaning, thereby enabling her to superimpose her reserve for unearned premium statute on business transacted in every city and hamlet in the Nation. We see little faith and credit here.

But what are Wisocnsin rights under the Federal system? It may "establish laws, through both its judicial and its legislative arms, which are controlling upon *its inhabitants and domestic affairs.*" (Emphasis supplied) (*Pink* v. *A.A.A. Highway Express, Inc.*, 314 U. S. 201, 209.) But when such laws clash with the rights of the inhabitants of other states, under the laws peculiar to those states, "This court must determine for itself the extent to which the statutes of one state may qualify or deny rights asserted under the statutes of another." (*Alaska Packers Assn.* v. *Ind. Acc. Comm.*, 294 U. S. 532, 547.) The examination under this function requires "appraisal (ing) of the governmental interests of each jurisdiction and turning the scale of decision according to their weight." (*Alaska Packers Assn.* v. *Ind. Acc. Comm.*, 294 U. S. 532, 547.) That philosophy proceeds from the fundamental ground that "The Constitution and principles of legal thinking allow the law of the place where the contract is made to determine the validity and consequences of the act." (*Mutual Life Insurance Co.* v. *Liebing*, 259 U. S. 209, 214 (1922).) The full faith and credit clause does not permit "one state to legislate for the other or to project its laws across state lines * * *." (*Pacific Employers Ins. Co.* v. *Ind. Acc. Comm.*, 306 U. S. 493, 504.) Neither does it "enable one state to override the laws and policy of another." (*Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, 438.)

Wisconsin seeks to do just that! Attempting by virtue of full faith and credit to preclude California from enforcing its own law as to events occurring within its borders is vastly different than insisting that Wisconsin accord the same full faith and credit to transactions without as are accorded in states of occurrence. And when consideration is focused upon the absence of any Wisconsin interest, as compared to the impelling interests of the great number of states arrayed against it, if that Clause has become "a national unifying force," if it made each State "an integral part of a single Nation, in which rights judicially established in any part are given nation-wide application," then the necessity for its application in the case at bar becomes imperative.

CONCLUSION.

It is respectfully submitted that, for the reasons urged herein, the judgment of the Supreme Court of Wisconsin should be reversed, or, should this Court be of opinion that the issue of interstate commerce should not be passed upon by it at this time and the issues of due process and full faith and credit are not determinative, that the judgment be vacated and the cause remanded for further proceedings to enable the Supreme Court of Wisconsin to pass upon the commerce issue. (*Wallina* v. *Reuter Co.*, 321 U.S. 671, 676 and cases cited.)

Respectfully submitted,

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Chicago, Illinois, December 16, 1944.

APPENDIX IA.

STATUS AS TO STATE RETALIATORY LAWS.

Summary of Situation in Various States as Compiled by C. C. Fraizer, Director of Insurance of Nebraska as Chairman of the Laws and Legislation Committee of National Association of Insurance Commissioners.

In his capacity as chairman of the laws and legislation committee of the National Association of Insurance Commissioners, C. C. Fraizer, Director of Insurance of Nebraska, sent a questionnaire to the Insurance Department of each state on the existing situation as to retaliatory laws in that state. A summary of the information obtained is given by Ernest D. Gerye, assistant to the director, in a report to Director Fraizer in which he says:

"Briefly summarizing the information hereinabove contained, it appears that none of the states have experienced serious difficulty applying the Retaliatory provisions of the laws of the several states with reference to taxes, fees and licenses. There is this difference, however, some states have concluded that the purpose of retaliation in respect to licenses, fees and taxes is not necessarily retaliation, but rather a leveling process so that there will be no discrimination as between states. Such states figure licenses, fees and taxes on an aggregate basis and if the total fees, taxes and licenses required by one state are greater in amount than the licenses, taxes and fees required of foreign companies by the retaliating state, then such state will require the company of that state to pay the larger amount. In Nebraska, and in some of the other states, our Retaliatory Laws have been construed on a fee for fee basis rather than on an aggregate basis.

"It is respectfully suggested that uniformity in the application of the Retaliatory Laws as respects taxes, fees and licenses would be highly desirable and will tend to lessen friction and make for better cooperation.

"The real difficulties, however, are to be found in those Retaliatory provisions with reference to 'penalties, obligations and prohibitions,' as hereinabove suggested. It would seem that the industry and regulations would be in a better position to serve the public if the Retaliatory Laws could be made permissible rather than mandatory. That is to say, if the several departments were given discretion in such matters."

The situation as to the Retaliatory Laws in the several states is given briefly in the following:

Alabama.

Alabama reports that the Attorney General of that state has ruled that the Retaliatory Laws of Alabama are unconstitutional and void. The ruling appears to be based upon a decision of the Supreme Court of Tennessee construing a former retaliatory law. The Attorney General concludes that the present law contains the same faults which were found in the former law.

Arkansas.

Arkansas has no general retaliatory law. There is a provision requiring retaliation in respect to non-resident brokers licenses. The law also requires life, health and accident companies domiciled in foreign states to make certain deposits when the laws of such foreign states require such deposits to be made by Arkansas companies.

California.

California does not retaliate except when a foreign state discriminates as between California companies and the

domestic companies of such states. By decision of the Supreme Court of California in the case of Bankers Life Company versus Richardson, 218 Pac. 586, the Retaliatory Laws are to be strictly construed and executed with care.

Connecticut.

In the past few years Connecticut has retaliated only with respect to taxes, fees and licenses. The state also requires deposits for certain lines of insurance when foreign states make the same requirements of Connecticut companies.

District of Columbia.

The District of Columbia has no retaliatory law.

Florida.

The state of Florida reports that it has experienced no difficulty with other states. In 1943 a Retaliation Law affecting non-recident agents and brokers was passed. The Commissioner reserves comment on the 1943 non-resident law.

Georgia.

Prior to the year 1944, the state of Georgia has not endeavored to retaliate against other states. The state is now attempting to require companies to pay the same taxes, fees and other charges which the foreign state of the company's domicile requires of Georgia companies. The companies have been paying the taxes required under protest. There have been no legal actions commenced so far. The Commissioner states that the tax laws of Georgia are antiquated and unlike those of other states.

Idaho.

Idaho has no Retaliation Laws.

Illinois.

The Illinois Department states that the Federal Life Insurance Company, an Illinois insurance company, has been unable to get into the state of Wisconsin. The same comment is made with reference to the Mid States Insurance Company. The Commissioner further states that the State Farm Mutual Automobile Insurance Company of Bloomington, Illinois, has been doing business in the state of Wisconsin; that legal proceedings are now pending in the courts with reference to tax matters, and that the state of Wisconsin has refused to renew the company's licenses. Illinois also complains that the All States Insurance Company and the All States Fire Insurance Company have had applications pending for admission to the state of Massachusetts for some three years; that the license has not been denied, however, they have not been issued.

Indiana.

Indiana states that the Emmco Insurance Company of South Bend, Indiana, which writes fire coverages, has been unable to get into the State of Massachusetts.

Kansas.

The state of Kansas reports that the Department retaliates only with reference to taxes, fees and deposits. The state has not experienced any difficulty with reference to the Retaliatory Laws.

Louisiana.

The Secretary of State, of Louisiana, reports that he is now on the job and will make a report at a later time.

Maine.

The state of Maine reports no difficulty in the enforcement of its Retaliatory Laws.

Maryland.

The state of Maryland reports no difficulty with other states with reference to the enforcement of Retaliatory Laws. The law is being applied with reference to aggregate charges. The Commissioner suggests that retaliation should be made permissible rather than mandatory.

Michigan.

The state of Michigan reports that it has experienced no difficulty in the application of the Retaliatory Statutes.

Mississippi.

The Retaliatory Statute of Mississippi was enacted in 1942 and the Insurance Department reports that same has been applied only with reference to non-resident brokers.

Nebraska.

The state of Nebraska has experienced no difficulty in the application of its Retaliatory Laws. The laws are applied chiefly as respects licenses, taxes and fees.

Nevada.

The Retaliatory Law that formerly obtained in the state of Nevada was repealed in 1941. The state now has no Retaliatory Laws.

New Hampshire.

New Hampshire applies the retaliatory provisions with respect to deposits and bonds; and also with respect to taxes and fees. The state has experienced no difficulty in this connection.

New Jersey.

The state of New Jersey recently amended the Retaliatory Laws so that the law does not now apply to restrictions on the kinds of business that may be done in the state.

North Carolina.

The Retaliatory Laws of North Carolina have been applied to licenses, fees, and taxes and to non-resident brokers. There has been little or no difficulty in the application.

North Dakota.

North Dakota has applied retaliation as to non-resident agents and brokers licenses.

Ohio.

Ohio reports that the only difficulty encountered with reference to the application of Retaliatory Laws is with reference to "penalties, obligations and prohibitions." The Commissioner referred to the Workmen's Compensation Laws of Ohio which prohibit all companies, foreign and domestic, from writing Workmen's Compensation coverage in the state of Ohio. The Commissioner also referred to the proposition that New Jersey did not permit the writing of personal floater policies.

Oregon.

The Retaliatory Laws of Oregon are mandatory only as effects "other obligations and prohibitions". Otherwise, the laws are permissive.

Pennsylvania.

Pennsylvania has retaliated as against Ohio companies writing Workmen's Compensation in Pennsylvania. Under Ohio law, no insurance company is permitted to write Workmen's Compensation. There is a state fund for that purpose. Ohio does authorize its domestic companies to write Workmen's Compensation outside of Ohio, but does not permit such companies to write such coverage within the state. As a result of this situation, Ohio has experienced difficulty with several states including Vermont and New Jersey. However, since the amendment of the New Jersey law noted above, New Jersey now permits Ohio to write Workmen's Compensation in that state.

Rhode Island.

Rhode Island reports that other states have cooperated freely and that it has experienced no difficulty in the application of the Retaliatory Laws.

Tennessee.

Tennessee reports difficulties with Kentucky with reference to non-resident agents and brokers.

Texas.

The state of Texas retaliates concerning taxes and fees on an aggregate basis in all states except South Dakota,

Utah, Indiana, Iowa, Missouri, Minnesota, Nebraska, North Dakota, Oklahoma, Rhode Island, South Carolina and Wisconsin. The Texas Department says that in the states last named, retaliations is on a fee by fee basis. The state also requires certain deposits to be made by California and Delaware companies.

Vermont.

Vermont reports difficulty with Ohio with reference to Workmen's Compensation Underwriters. Reference is made to the comment under "Pennsylvania."

Virginia.

The state of Virginia also reports difficulty with reference to Ohio companies writing Workmen's Compensation. It has been decided, however, that Virginia laws do not require retaliation as against Ohio companies writing such coverage.

Washington.

Washington reports no difficulty in the application of the Retaliatory Laws.

West Virginia.

Section 3278 of the insurance laws of the state of West Virginia vests discretion in the Insurance Department, or Commissioner, with reference to the application of retaliatory provisions.

Wisconsin.

The state of Wisconsin has applied the Retaliatory law with respect to taxes, licenses and fees, and reports that no problems have been encountered.

(The Eastern Underwriter, December 8, 1944, pp. 47, 112)

APPENDIX IB.

CITATIONS TO VARIOUS RETALIATORY PROVISIONS OF THE SEVERAL STATES.

Ala.	Code (1928) sec. 8363.
Ariz.	Rev. Code (1928) sec. 1807.
Ark.	Pope's Dig. Stat. (1937) secs. 7780, 7833.
Cal.	Deering's Ins. Code (1937) sec. 1560.
Colo.	Stat. Ann. (1935) chap. 87, sec. 94.
Conn.	Gen. Stat. (1930) sec. 1281.
Del.	Rev. Code (1935) sec. 9[illegible].
Ga.	Code Ann. (1935) sec. 56-315.
Ill.	State Bar Stat. (1935) chap. 73, par. 80.
Ind.	Burns' Stat. (1928 Supp.) sec. 39-5012.
Iowa.	Code (1935) secs. 8612-cl, 8707, 8720.
Kan.	Gen. Stat. (1935) sec. 40-253.
Ky.	Carroll's Stat. Ann. (1936) sec. 637.
La.	Dart's Gen. Stat. (1932) sec. 4034.
Me.	Rev. Stat. (1930) chap. 12, sec. 57.
Md.	Bagby's Ann. Code (1924) art. 48A, sec. 41.
Mass.	Ann. Laws (1932) chap. 175, sec. 159.
Mich.	Stat. Ann. (1935) sec. 24.18.
Minn.	Mason's Stat. (1927) sec. 3721.
Mo.	Rev. Stat. (1929) sec. 5935.
Mont.	Rev. Code (1935) sec. 6155.
Neb.	Comp. Stat. (1929) sec. 44-1121.
Nev.	Comp. Laws (1938 Supp.) sec. 3649.
N. H.	Pub. Laws (1926) chap. 275, secs. 47 to 54.
N. J.	Rev. Stat. (1937) sec. 17:32-12.
N. M.	Stat. Ann. (1929) sec. 71-129.
N. Y.	Cahill's Cons. Laws (1930) chap. 30, sec. 33.

CITATIONS TO VARIOUS RETALIATORY PROVISIONS OF THE SEVERAL STATES (Contd.).

N. C.	Code (1931) sec. 6413.
N. D.	Comp. Laws (1913) sec. 4979.
Ohio	Throckmorton's Rev. Code (1936) secs. 658, 5436.
Okla.	Stat. Ann. (1936) title 36, sec. 666; Stat. Ann. (1937 Supp.) title 36, sec. 196.
Ore.	Code (1930) sec. 46-110.
Pa.	Purdon's Stat. (1936) title, sec. 50.
R. I.	Gen. Laws (1923) sec. 3758.
S. C.	Laws of 1934, act 793.
S. D.	Comp. Laws (1929) sec. 9170.
Tenn.	Williams' Code Ann. (1934) sec. 6124.
Tex.	Vernon's Stat. (1936) art. 4758.
Utah	Rev. Stat. (1933) sec. 43-3-8.
Vt.	Pub. Laws (1933) secs. 7016, 7071.
Va.	Code (1938 Supp.) sec. 4233.
Wash.	Rem. Rev. Stat. (1931) sec. 7092.
Wis.	Stat. (1937) secs. 76.35, 76.36.
Wyo.	Rev. Stat. (1931) sec. 57-435.

TWO OF THE TYPICAL RETALIATORY LAWS ARE QUOTED BELOW:

Illinois Revised Statutes, 1943—Insurance—Chap. 73, ¶1056

Retaliation.) Whenever the existing or future laws of any other state or country shall require of companies incorporated or organized under the laws of this State as a condition precedent to their doing business in such other state or country, compliance with laws, rules, regulations

and prohibitions more onerous or burdensome than the rules and regulations imposed by this State on foreign or alien companies, or shall require any deposit of securities or other obligations in such state or country, for the protection of policyholders or otherwise or require of such companies or agents thereof or brokers the payment of penalties, fees, charges or taxes greater than the penalties, fees, charges or taxes required in the aggregate for like purposes by this Code or any other law of this State, of foreign or alien companies, agents thereof or brokers, then such laws, rules, regulations and prohibitions of said other state or country shall apply to companies incorporated or organized under the laws of such state or country doing business in this State, and all such companies, agents thereof, or brokers doing business in this State, shall be required to make deposits, pay penalties, fees, charges and taxes, in amounts equal to those required in the aggregate for like purposes of Illinois companies doing business in such state or country, agents thereof or brokers. Whenever any other state or country shall refuse to permit any insurance company incorporated or organized under the laws of this State to transact business according to its usual plan in such other state or country, the director may, if satisfied that such company of this State is solvent, properly managed, and can operate legally under the laws of such other state or country, forthwith suspend or cancel the license of every insurance company doing business in this State which is incorporated or organized under the laws of such other state or country to the extent that it insures in this State against any of the risks or hazards which are sought to be insured against by the company of this State in such other state or country. As amended by act approved July 21, 1941. L. 1941, vol. 1, p. 837. S. H. A. 83—1056; J. A. 66.1119.

 76.35 Increase of fee of foreign company.

Whenever the laws of any other state of the United States or of any foreign country, or the rules, regulations, requirements or impositions thereof, or of any department or officer thereof shall require of insurance companies or fraternal benefit societies organized under the laws of this state and doing business in such state or foreign country or of their agents, any deposit of securities for the protection of their policyholders or otherwise, or any payment of taxes, fines, penalties, certificates of authority, license fees or otherwise, greater than the amount required by the laws of this state for the same purposes from similar companies or fraternal societies organized under the laws of such other state or foreign country and doing business in this state, or shall impose other obligations, prohibitions or restrictions additional to or in excess of those imposed by the laws of this state upon insurance companies or fraternal benefit societies of such other state or foreign country or their agents, then all such companies or fraternal benefit societies of such other states or foreign country doing business within this state shall make the same deposit with the state treasurer and shall pay him the same sum for taxes, fines, penalties, certificates of authority, license fees or otherwise, and the same obligations, prohibitions or restrictions of whatever kind shall be imposed upon them and their agents as a condition to the issuance of a license to them, as is required to be made or paid or is imposed upon companies or societies of this state or their agents by the laws of such other state or foreign country, or the rules, regulations, requirements or impositions thereof, or of any department or officer thereof.

76.36 Foreign Insurance Companies; Reciprocal Taxation. When any insurance corporation or other insurer of this state shall be licensed to transact insurance in any

other state, territory, or district of the United States, like insurance corporations or insurers from such other state, territory or district shall pay no other or greater taxes, fees, or licenses than are or would lawfully be imposed upon and collected from like insurance corporations or insurers of this state by such other state, territory or district; but the amount of such taxes or fees paid by insurance corporations or insurers subject to sections 76.34, 200.13 and 201.59 shall not be less than the amount required and applied as provided in said sections, and the amount of such taxes paid by insurance corporations or insurers under the provisions of subsection (1) of section 76.30 shall not be less than three-eighths of one per centum on the amount of the gross premiums received for direct insurance, less the deductions provided in section 76.31, by such corporations or insurers during the preceding year in this state. This section shall not apply to insurance corporations or other insurers of any foreign country.

APPENDIX II.

Section 201.03, Wis. Stats. Incorporation of Mutual Companies.

"• • •

"(9) Any mutual insurance company after January 1, 1943 transacting automobile insurance authorized by subsection (15) of section 201.04 shall maintain a minimum surplus of $50,000 and when such surplus falls below $50,000, the commissioner shall order the surplus replaced and if not so replaced in 15 days, the commissioner may proceed against such company under section 200.08."

Section 201.32, Wis. Stats. Foreign Companies; admission.

"• • •

"(3) A mutual company shall satisfy the requirements as to solvency and the limitations as to expenses exacted of like domestic companies."